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Secret Information

24 Aug 52

Office Memorandum • UNITED STATES GOVERNMENT

TO : General Counsel

DATE: D

FROM : Assistant General Counsel

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SUBJECT: Memorandum dated 28 July 1952 from []
Acting Chief, IRB, re Keeler Polygraph

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I. I have made a cursory review of the applicable law relative to the issuance of patents to Government employees. The pertinent section of the U. S. Code is Title 35, Section 45, which provides for the issuance to Government offices of patents for inventions used in the public service. The cases hold that a Government employee who has made an improvement in a machine with which he is connected or who has made an invention during the course of his general employment is permitted to obtain a fee and a patent at no cost, providing further that the Government receives a non-exclusive irrevocable, royalty-free license in and to the invention. Gill v. U. S., 160 U.S. 426; U. S. v. Dubilier Condenser Corporation, 289 U.S. 178; et al.

2. There is, however, a further restriction imposed upon the issuance of patents which is defined in Executive Order No. 10096, entitled "Uniform Government Patent Policies for Inventions by Government Employees." This Executive Order sets forth the basic policy established for all Government agencies with respect to inventions made by any Government employee. The following provisions are pertinent; e.g., in the event that the invention has been made by an employee in the course of his employment wherein he is charged with the responsibility of inventing or improving an existing machine, the Government shall obtain the entire right, title, and interest in and to the invention. However, in such a case where the contribution of the Government has been measured by an established criterion set forth in the Order and

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it is determined that such interest is insufficient equitably to justify the requirement of assignment to the Government of the right, title, and interest in and to the patent, the Government shall leave such title to the invention in the employee, subject, however, to the reservation to the Government of a non-exclusive, irrevocable, assignable, royalty-free license in the invention.

3. In the event that the facts in the instant case do not come within the purview of the Executive Order No. 10096, Section 45 of Title 35 will apply, and it will be necessary that the inventor make application for a patent. Such an application will protect this Agency's rights in the further manufacture of the device defined in the referenced memorandum.

4. It will be necessary to develop further facts in order to ascertain whether Section 45 governs or whether Executive Order No. 10096 is applicable. In view of the fact that there has been developmental work in this field by outside contractors, it is doubtful whether the inventor or this Agency can show that "flash of inventive genius" necessary for the issuance of a patent.

5. A meeting has been arranged between [] and the inventor in order to develop these necessary facts, at which a determination can be made whether this Agency should pursue its rights relative to the developmental work.

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OGC/EPH:CC (28 August 1952)

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